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September 5, 1985

Elizabeth A. Thompson, Esq.
Popham, Haik, Schnobrich,
Kaufman & Doty
4344 IDS Center
Minneapolis, Minnesota 55402

Re: U.S.A. et al. v. Reilly Tar & Chemical Corporation
et al.

Dear Beth:

Enclosed please find a copy of language our office has drafted to be inserted as Section 11.3 of the Remedial Action Plan in the above-referenced litigation. This Section 11.3 is intended to deal with the Department of Interior's request that wetland areas south of the former Reilly site be filled, so as to make them unattractive to nesting and migratory birds, prior to the 1987 nesting season. This language has been given to David Hird, Steve Shakman and Elizabeth Maxwell for their review. David Hird indicated his intent to discuss this proposed language with Jean Sutton of the Solicitor's Office of the Department of Interior and advise us as to whether it is an acceptable mechanism to resolve the Department of Interior's concerns.

With the proposed RAP language, I am also enclosing a copy of our proposed amendment to Table I of the Agreement between Reilly and the City of St. Louis Park, which would identify the respective responsibilities of Reilly and the City for implementing the requirements of Section 11.3 of the RAP. Please let me know your and the City's responses to the proposed language in Section 11.3 and the amendments to Table I enclosed. When we receive a response from David Hird and Jean Sutton at the Department of Interior on this language, we will so advise you.

DORSEY & WHITNEY

Elizabeth A. Thompson, Esq.
September 5, 1985
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Your assistance in resolving these issues expeditiously
will be greatly appreciated.

Very truly yours,



Becky A. Comstock

BAC:sls
Enclosures

cc: David Hird
Stephen Shakman
Elizabeth Maxwell /
Jean Sutton
Robert Polack

SLP/Reilly Agreement

TABLE I AMENDMENT

11. Near Surface Contamination

11.1	Soil Investigation	City	City
11.2	Notices in Deed	City	City
11.3	Wetlands Filling	City/Reilly*	City/Reilly*
11.4	Louisiana Ave/St. Trunk Hwy 7	City	City
11.5	Site Development	City	City
11.6	Other Site Owner	City	City

- * The City agrees to use its best efforts to obtain all fill required by Section 11.3 of the RAP and further agrees to provide any cutting and grading required under Section 11.3. All other requirements of Section 11.3 shall be performed and funded by Reilly.

11. Wetlands Filling

11.3.1 Filling Required

By March 31, 1987, Reilly shall fill the wetland areas between Walker Street, Louisiana Avenue, Lake Street and South Frontage Road Extension and an imaginary north-south line extending from the intersection of Walker Street and West 37th Street in such a manner as to make them unattractive for habitation or nesting by migratory waterfowl. Reilly shall use clean fill compatible with possible later construction of the Louisiana Avenue/State Trunk Highway 7 intersection in this area. Reilly shall cut down standing wetlands vegetation (not including trees) before filling. The wetland areas shall be filled in the following sequence: (1) the area south of State Trunk Highway 7 bounded by Louisiana Avenue, Lake Street and the recent fill area to the west; (2) the area north of State Trunk Highway 7 bounded by Louisiana Avenue and the existing fill at Mobile Marine Discount; (3) the small area immediately south of Walker Street and Mill City Plywood; (4) the small area immediately north of the South Frontage Road extension; (5) the drainage swale south of State Trunk Highway 7; and (6) the drainage swale north of State Trunk Highway 7.

11.3.2 Property Owners

Reilly shall use its best efforts to obtain access to the property involved for the purpose of and prior to filling a particular area. Reilly shall not be required

to pay any fee for access as part of its best efforts to obtain access. If Reilly is unable to obtain access, using its best efforts, the U.S. Fish and Wildlife Service of the Department of Interior or the MPCA shall use their statutory and other regulatory authority to obtain access to the property involved. If required, the March 31, 1987 deadline for filling shall be extended for areas where access is in dispute with the property owner(s) by a period equal to the time from Reilly's receipt of written refusal to grant access by the property owner(s) to Reilly's receipt of written notice of access from the U.S. Fish and Wildlife Service or MPCA.

11.3.3 Approval

Reilly shall provide written notification to the director of the St. Paul district office of the U.S. Fish and Wildlife Service (the District Director) after completing the filling of each of the areas enumerated above. Within 14 Days of receipt of Reilly's notification, the District Director or his designee will inspect the filled area and provide written notification to Reilly approving the filling as performed or requesting specific additional filling. Any disputes over additional requirements of the District Director shall be resolved in accordance with the procedures of Part I of the Consent Decree, which, for purposes of the Section 11.3 shall apply to the District Director as if he or she were the Regional Administrator. The Regional Administrator,

the Director and St. Louis Park shall be copied on all correspondence between Reilly and the District Director pertaining to wetlands filling.